

Assembly Bill No. 10

CHAPTER 64

An act to amend Section 23153 of, and to amend, repeal, and add Section 23221 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor July 6, 1999. Filed with
Secretary of State July 6, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 10, Correa. Bank and corporation taxes: minimum franchise tax.

The Bank and Corporation Tax Law generally imposes a franchise tax on corporations doing business within the limits of this state, including a minimum franchise tax on specified banks and corporations, except as provided, and provides, for income years beginning on or after January 1, 1999, for a minimum franchise tax of \$500 for the 2nd taxable year for any corporation, except as specified, that has gross receipts, less returns and allowances reportable to this state, of less than \$1,000,000 for the income year. The reduced tax applies to any corporation that is a qualified new corporation, as defined, incorporated on or after January 1, 1999.

This bill would provide that for income years beginning on or after January 1, 2000, every corporation, except as specified, that qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first and second taxable years.

The Bank and Corporation Tax Law provides that a corporation that incorporates under the laws of this state or qualifies to transact interstate business in this state shall prepay a specified minimum franchise tax of \$800, except as provided. That law also provides that, for income years commencing on or after January 1, 1999, the amount of the prepaid minimum franchise tax for a qualified new corporation, as defined, shall be \$300, unless its gross receipts, as specified, or its tax liability, exceeds specified amounts.

This bill would provide that every corporation that incorporates under the laws of this state or qualifies to do business in this state on or after January 1, 2000, and before January 1, 2001, shall not be subject to the prepayment of that minimum franchise tax, except as provided. This bill would eliminate the prepayment of minimum franchise tax provisions on January 1, 2001, except as provided.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive income years, commencing with the first income year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), for income years beginning on or after January 1, 1999, and before January 1, 2000, every “qualified new corporation” shall pay annually to the state a minimum franchise tax of five hundred dollars (\$500) for the second taxable year. This subdivision shall apply to any corporation that is a qualified new corporation and is incorporated on or after January 1, 1999, and before January 1, 2000.

(1) The determination of the gross receipts of a corporation, for purposes of this subdivision, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(3) “Qualified new corporation” means a corporation that begins business operations at or after the time of its incorporation and that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the income year of less than one million dollars (\$1,000,000). “Qualified new corporation” does not include any corporation that began business operations as a single proprietorship, a partnership, or any other form of business entity prior to its incorporation. This subdivision shall not apply to any corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

(5) For any income year beginning on or after January 1, 1999, and before January 1, 2000, if a corporation has paid five hundred dollars (\$500) for the second taxable year under this subdivision, but in its second taxable year, the corporation’s gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars (\$1,000,000), an additional tax in the amount equal to three hundred dollars (\$300) for the second taxable year shall be due and payable



by the corporation on the due date of its return, without regard to extension, for that year.

(f) (1) Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first and second taxable years.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (c) of Section 1905 of the Corporations Code and that does not thereafter do business shall not be subject to the minimum franchise tax for income years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

SEC. 2. Section 23221 of the Revenue and Taxation Code is amended to read:

23221. (a) Except as provided under subdivisions (b) and (f), a corporation which incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars (\$25). The prepayment shall be made to the Secretary of State with the filing of the articles of incorporation or the statement and designation by a foreign corporation. The Secretary of State shall transmit the amount of the prepayment to the Franchise Tax Board. The Franchise Tax Board shall certify to the Secretary of State on an individual or class basis those domestic or foreign corporations which are exempt from prepayment or for which prepayment to the Secretary of State is waived.

(b) (1) For income years commencing on or after January 1, 1997, and before January 1, 1999, the amount payable by a qualified new corporation under subdivision (a) shall be six hundred dollars (\$600).

(2) For income years commencing on or after January 1, 1999, and before January 1, 2000, the amount payable by a qualified new corporation under subdivision (a) shall be three hundred dollars (\$300).

(c) For purposes of this section, “qualified new corporation” means a corporation that begins operation at or after the time of its incorporation and that reasonably estimates that, for the income year, it will have both gross receipts, less returns and allowances reportable to this state, of one million dollars (\$1,000,000) or less and a tax liability under Section 23151 that does not exceed eight hundred dollars (\$800). “Qualified new corporation” does not include any corporation that began business operations as a single proprietorship, a partnership, or any other form of business entity prior to its incorporation.

(1) The determination of gross receipts of a corporation, for purposes of this section, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the bank or corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(d) Subdivision (b) shall not apply to any corporation if 50 percent or more of its stock is, or will be upon the initial issuance of stock, owned by another corporation.

(e) (1) For income years commencing on or after January 1, 1997 and before January 1, 1999, if a corporation paid six hundred dollars (\$600) under paragraph (1) of subdivision (b), but for its first income year the corporation’s tax liability under Section 23151 exceeds eight hundred dollars (\$800), or the corporation’s gross receipts, as determined under paragraph (2) of subdivision (c), exceed one million dollars (\$1,000,000), an additional tax in an amount equal to two hundred dollars (\$200) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

(2) For income years commencing on or after January 1, 1999, and before January 1, 2000, if a corporation paid three hundred dollars (\$300) under paragraph (2) of subdivision (b), but for its first income year the corporation’s tax liability under Section 23151 exceeds eight hundred dollars (\$800), or the corporation’s gross receipts, as determined under paragraphs (1) and (2) of subdivision (c), exceed one million dollars (\$1,000,000), an additional tax in an amount equal to five hundred dollars (\$500) shall be due and payable by the



corporation on the due date of its return, without regard to extension, for its first income year.

(f) Every corporation that incorporates under the laws of this state or qualifies to transact intrastate business in this state on or after January 1, 2000, and before January 1, 2001, shall not be subject to the amount payable under subdivision (a), except that any credit union shall thereupon prepay a tax of twenty-five dollars (\$25).

(g) This section shall remain in effect only until January 1, 2001, and as of that date is repealed.

SEC. 3. Section 23221 of the Revenue and Taxation Code is added to read:

23221. (a) Any credit union that incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay a tax of twenty-five dollars (\$25) as provided in Section 23153. The prepayment shall be made to the Secretary of State with the filing of the articles of incorporation or the statement and designation by a foreign corporation. The Secretary of State shall transmit the amount of the prepayment to the Franchise Tax Board. The Franchise Tax Board shall certify to the Secretary of State on an individual or class basis those domestic or foreign corporations that are exempt from prepayment or for which prepayment to the Secretary of State is waived.

(b) This section shall become operative and apply beginning on or after January 1, 2001.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

